

NORTHWEST ENVIRONMENTAL ADVOCATES



December 2018

Winter 2018 Newsletter

Dear Friends:

It's been a tremendous year with great rewards. Winning a reprieve for Oregon's beaver population, forcing the issuance of discharge permits in Oregon, getting the clean-up of the Deschutes River in Washington on track, and beating the Trump Administration at its own game, just to mention a few. The excellent work of our legal team never stops amazing me. This team and your continued support of NWEA will bring the change you want —cleaning up polluted water, restoring salmon habitat, reducing toxics, and protecting human health.

Of course it won't be easy. First we have to sue agencies for just plain failing to do their job at all. Then, more frequently than not, we have to file a second lawsuit to make them do their job right. It gets to be downright absurd that federal and state agencies cannot follow the clear letter of the nation's laws. I have to think Congress knew just how shabbily the agencies would treat the Clean Water Act when it provided for citizen enforcement, not only against polluters but also against the agencies charged with protecting human health and species.

NWEA's calling card is being persistent in the face of adversity. Going forward, we will continue to advocate *with* agencies for good outcomes but we will continue to bring lawsuits *against* agencies to enforce the law.

What we need from you is your continuing support, which is both essential to our work and truly appreciated!

NWEA: ENFORCING THE CLEAN WATER ACT IN OREGON

As the lead agency in the supposed “ecotopia” that is Oregon, the Department of Environmental Quality (DEQ) does a remarkably bad job in complying with the Clean Water Act itself and in making polluters comply as well. Whether it's controlling the pollution discharged from cities and industries, or the polluted runoff from logging and farming, or complying with the requirements of the Clean Water Act, well, Oregon DEQ just hasn't been showing up and doing the job.

COURT ORDER WILL MOVE OREGON FROM LAST PLACE ON PERMITS.

Although the Clean Water Act requires discharge permits for cities and industries to be revised every five years to reflect changed understanding of health impacts of pollution and improved treatment technologies, Oregon DEQ's record on issuing up-to-date permits is the worst in the country. We call these old permits “zombies.” Now, NWEA has settled a lawsuit and obtained a state court order to force Oregon DEQ to issue timely permits and we have obtained DEQ commitments to improve the quality of the permits issued. The zombies are on the move!

NWEA was represented in the Oregon Zombie Permit case by Lia Comerford and Allison LaPlante, of the Earthrise Law Center, and Karl Anuta, of the Law Office of Karl G. Anuta.

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CLEANING UP MEDFORD'S SLIME IN THE ROGUE RIVER. In May, we sued the City of Medford for discharging nutrient pollution that is triggering algal growth and changing the Rogue River's natural composition of aquatic bugs. Medford has long known that it is violating its discharge permit and it has done absolutely nothing. Unfortunately, it goes without saying that Oregon DEQ also shares the blame due to its failure to issue permits that protect water quality. This lawsuit seeks to enforce a boilerplate condition that prevents Medford from violating water quality standards, using national legal precedent that we established in our epic lawsuit against the City of Portland for discharging raw sewage to the Willamette River.

NWEA is represented in this case by Jamie Saul and Lia Comerford, of the Earthrise Law Center. A big thank you to member John MacDiarmid for his field support of our expert's water quality sampling, and to the Rogue Fly Fishers and Federation of Fly Fishers for publishing the first study on Medford's impact to the Rogue in 2013.

NWEA: TAKING ON PUGET SOUND'S POLLUTION PROBLEMS

Washington Governor Jay Inslee announced yet one more urgent Puget Sound initiative this year: saving the endangered orcas of the Sound. Thus were killer whales added to a growing list of urgent state initiatives—to save salmon, to reopen contaminated shellfish beds, and to address ocean acidification. While one can't save salmon or orcas by taking any single action, one thing is clear: dramatically reducing toxic and nutrient pollution in Puget Sound is urgently needed. The other thing that is clear is that the Washington Department of Ecology does not want to do its job.

FORCING MODERN SEWAGE TREATMENT TECHNOLOGY FOR PUGET SOUND.

Seven years ago, Ecology identified municipal sewage treatment plants as the largest human source of nutrient pollution in Puget Sound. Nutrient pollution in the Sound is causing increasing algae blooms in nearly all colors of the rainbow. The combination of the algae and the discharge of nitrogen itself is sucking dissolved oxygen out of the water. Oxygen is as essential to aquatic life as it is to people. The entire food web of Puget Sound is at risk.

Washington State has a special law that requires polluters to use modern technology before discharging to the state's waters. This 73-year old law, known as "AKART," goes well beyond the requirements of the federal Clean Water Act. So, just weeks ago, NWEA petitioned Ecology to develop a rule that would require sewage treatment plants to remove nutrient pollution prior to discharge. Ecology has until January 13, 2019 to respond to the petition.

NWEA thanks Bryan Telegin, of Bricklin & Newman LLC, and Andrew Hawley, of the Western Environmental Law Center, for their assistance in preparing this petition.

JUMP-STARTING THE CLEAN UP OF WASHINGTON'S DESCHUTES RIVER. A tributary to Puget Sound at Budd Inlet, the Deschutes River has suffered unsafe pollution levels for decades. When waters are polluted like this, the state and federal agencies are required to create a science-based clean-up plan that assigns pollution reduction goals to every pollution source. After 13 years of working on one such Total Maximum Daily Load (TMDL) clean-up plan for the Deschutes and Budd Inlet, Ecology managed to submit only part of it to the U.S. Environmental Protection Agency (EPA) in 2015. Although EPA is required to act in just 30 days, it did nothing until NWEA sued a year ago. The court ordered EPA to act and this summer it did, partially approving and partially disapproving Ecology's TMDL. The law also gives EPA just 30 days to prepare a replacement plan, which it has not. Last month, NWEA filed a second lawsuit to ensure EPA issues the clean-up plan.

NWEA is represented in this case by Bryan Telegin, of Bricklin & Newman LLC, and Lia Comerford, of the Earthrise Law Center.

NWEA: FORCING STATES TO USE BEST SCIENCE TO PROTECT SPECIES

PROTECTING WASHINGTON SALMON WITH WATER QUALITY STANDARDS.

After a very long wrestling match with the Trump/Pruitt EPA, NWEA finally obtained a court order on water quality standards that are needed to protect salmon in Washington State. The new standards triggered by this case will affect sources as diverse as logging and sewage treatment. In the settlement, the Washington Department of Ecology agreed to develop a fine sediment standard to protect salmon redds—the nests for salmon eggs—to make sure that salmon eggs and embryos have sufficient levels of dissolved oxygen. Fine sediment that smothers salmon redds are often the result of logging activities. EPA agreed to evaluate whether Washington's outdated ammonia standards protect salmon. Ammonia is a common toxic pollutant discharged from over 300 sewage treatment plants in Washington.

In a side note, this was the first settlement that made it through the Scott Pruitt policy against such settlements, the only outcome of which was adding an entire year to getting this done.

NWEA was represented in this case by Allison LaPlante and Kevin Cassidy, of the Earthrise Law Center.

REDUCING TOXICS IN OREGON WATERS. It's perplexing how a requirement to base regulatory decisions on the best available science can yield such different results. When NWEA forced the U.S. Fish & Wildlife Service to complete an Endangered Species Act review of toxic water quality standards for Idaho, the agency concluded that eight standards jeopardize the threatened species of bull trout. In contrast, when NWEA forced the agency to complete the same review in Oregon, it said that all of Oregon's toxic standards were fine.

In July, NWEA sued the Fish & Wildlife Service for failing to protect threatened bull trout from toxics in Oregon's waters, focusing on arsenic, selenium, and zinc. While in 2013, the agency had found that they posed no hazard to bull trout, a mere three years later, with the same science available, Fish & Wildlife agency concluded they posed a hazard. That sounds arbitrary.

NWEA is represented in the Washington Toxic Criteria case by Jamie Saul, Lia Comerford, and Allison LaPlante at the Earthrise Law Center.

OREGON'S RIVER TEMPERATURES

After winning our long-running lawsuit last year over Oregon's replacing allowable temperatures for cold-water salmon—16° to 18° C—with temperatures as high as 32° C (90° F), we are waiting for a court decision on what will happen to these high temperatures. That high of 32° C? It's lethal to salmon within seconds.

Ironically, this illegal replacement scheme took place each time the Oregon Department of Environmental Quality issued a pollution clean-up plan called a Total Maximum Daily Load (TMDL). The lawsuit affects multiple basins around Oregon including the Willamette, Rogue, Umpqua, Grande Ronde, John Day, Klamath, Umatilla, Middle Columbia/Hood), Malheur, Snake, and Sandy.

NWEA is represented in this case by Bryan Telegin of Bricklin & Newman, and Allison LaPlante of Earthrise Law Center at Lewis & Clark Law School. A big thank you to Mary Scurlock, of M. Scurlock & Associates, and Dale McCullough, retired fisheries biologist, for preparing expert declarations to support our remedy briefs in this case.

NWEA WINS REPRIEVE FOR OREGON'S BEAVERS

Working with the Center for Biological Diversity and Western Environmental Law Center, NWEA obtained a promise to stop killing Oregon's beavers from the U.S. Department of Agriculture's (USDA) sub-agency, Wildlife Services. Beavers' landscaping skills make them essential to recovery of threatened and endangered species such as salmon, steelhead, and the Oregon spotted frog. After we threatened to sue Wildlife Services for violating the Endangered Species Act last year, it agreed to stop killing beavers until it had complied with the law. As a bonus, it agreed to also temporarily stop killing river otters, muskrats, and mink.

NWEA is represented in this matter by Andrew Hawley, Western Environmental Law Center.

FREEDOM OF INFORMATION IS KEY

NWEA continues to sue federal agencies that refuse to release documents under the Freedom of Information Act (FOIA) including—just this year—the USDA's Animal and Plant Health Inspection Service (APHIS) and the U.S. Fish & Wildlife Service.

NWEA is represented in FOIA lawsuits by Paul Kampmeier and Emma Bruden, of Kampmeier & Knutsen; Lia Comerford, of Earthrise Law Center; and Dave Bahr, of Bahr Law Offices.

WHERE YOU — OUR MEMBERS — COME IN

Membership in NWEA provides us with obviously needed financial support. But membership is so much more. **We rely on members to provide NWEA with legal "standing" — that is, the right to file lawsuits on your behalf. So join today, sliding scale, from zero to infinity!**

FROM LAWSUITS TO POLICY, NWEA IS WORKING FOR YOU!

We encourage you to stay current on NWEA's activities through our website: www.NorthwestEnvironmentalAdvocates.org. The website has a lot of basic information as well as updates and original documents.

When you support NWEA, you do more than make sure that the nation's environmental laws are upheld. Because we're often the "go-to" group on clean water issues, you are helping the citizens groups and journalists across the region and the country who rely on NWEA.

Please remember that Northwest Environmental Advocates does a lot with very few resources so we count on your financial support. Contributions are tax deductible and greatly appreciated!

Sincerely,



Nina Bell
Executive Director

P.S. In enforcing the nation's environmental laws, **NWEA guarantees you an old-fashioned no frills operation---giving you highly credible and vigorous advocacy** without fancy slogans and glossy magazines. We really put your financial contribution to work, whether we're going to court or helping citizens. I hope that you will consider making a tax-deductible contribution to NWEA - I guarantee it will be put to good use!